may sue there must be some privity between him and the promisee and some obligation or duty owing from the latter to him, which would give a legal or equitable claim to the benefit of the promise, or an equivalent from him personally. A city being under no obligation to furnish water for protection against fire, it follows that a citizen has no right of action upon the city's contract with a water company. 71 Am. St. Rep. 196 (note).

A city is not liable at the suit of a citizen where it owns the water works. *Mendel* v. *Wheeling,* 28 W. Va. 233. Where city property was destroyed, the city was allowed to recover and so was a citizen who had a direct contract with the water company. *Knappman Whiting Co.* v. *Middlesex Water Co.,* 64 N. J. L. 240, 45 Atl. 692, 49 L. R. A. 572, 81 Am. St. Rep. 467; *Inhabitants of Milford* v. *Bangor Ry. & Elec. Co.,* 104 Me. 233, 71 Atl. 759; *Harris & Cole Bros.* v. *Columbia Water & Light Co.,* 114 Tenn. 328, 85 S. W. 897. But a citizen was denied damages for lack of privity, where a water company, under contract with the city, was made liable for all injuries to personal property caused by its negligence in the construction and operation of its works and required, should the city be sued, upon notice, to defend or settle the suit. *Becker* v. *Keokuk Waterworks,* 79 Iowa 419, 44 N. W. 694. So where the water company was made liable for such negligence by statute. *Krom* v. *Antigo Gas Co.* (Wis.), 140 N. W. 41.

The view taken by the courts of Kentucky, Florida and North Carolina is certainly the more convenient and it does not impose an unjust burden upon private water companies nor make them insurers. However, it seems to be established by the weight of authority that there is no privity of contract, and the dissenting decisions in the three states mentioned above are more humane than legally sound, and therefore an injured citizen is without remedy upon a contract made with the city.

NEGLIGENCE—IMPUTED NEGLIGENCE.—Plaintiff sues for injuries received from a collision between her fiancé's automobile, in which she was riding, and one of the cars of the defendant railway company. The car had no headlight but was so lighted within that one on the lookout must necessarily have seen it. *Held,* the negligence of the driver of the machine is so imputed to the plaintiff as to preclude any recovery on her part. *Colborne* v. *Detroit United Ry.* (Mich.), 143 N. W. 32.

Where the driver of a vehicle is under the control of the one riding with him any negligence on his part is so imputed to the latter as to defeat a recovery for an injury caused by the concurring negligence of the former and a third person. *Crampton* v. *Ivie,* 126 N. C. 894, 36 S E. 351; *Read* v. *City and Suburban Ry. Co.,* 115 Ga. 366, 41 S. E. 629. But if the one riding be a mere guest or companion of the driver, having no authority over him, then the negligence of the driver cannot be imputed to the other. *Hot Springs St. Ry. Co.* v. *Hildreth,* 72 Ark. 572, 82 S. W. 245; *Farley* v. *Wilmington and N. Electric Ry. Co.,* 3 Pennewill 581, 52 Atl. 543. And even in the case of husband and wife, where an injury to the latter is caused by the negligence of the former and a third party, the negligence of the husband cannot be imputed to her, in the

absence of any act on her part to encourage him in his negligence. *Louisville, etc., Ry. Co.* v. *Creek,* 130 Ind. 139, 29 N. E. 481; *Chicago, etc., Ry. Co.* v. *Spilker,* 134 Ind. 380, 33 N. E. 280. However, where a traveler riding with another, having an equal opportunity to discover and avoid danger, is injured through the negligence of the driver and another he is himself guilty of such negligence as precludes a recovery. *City of Vincennes* v. *Thuis,* 28 Ind. App. 523, 63 N. E. 315; *Bush v. Union Pac. Ry. Co.,* 62 Kan. 709, 64 Pac. 624.

In the principal case it is clear that the plaintiff had no control over the driver, and that she had not an equal chance to avoid the danger. She should have been allowed to recover for her injuries—the court seems to have erred when it held that the negligence of the driver is imputed to her.

PARENT AND CHILD—CUSTODY OF CHILD—TRANSFER.—The father and mother were husband and wife. There was an agreement between the mother and her aunt whereby the aunt should on the mother's death take the child in question into her custody and rear it. The father was not a party to this agreement. At the time of the mother's death, the aunt took possession of the child. It is admitted that both the father and the aunt were proper persons to have custody of the infant. *Held,* father can regain possession of his child. *Zink* v. *Milner* (Okla.), 135 Pac. 1.

No contract for the disposition of a child can be made by the father during his life time, the mother not participating therein, that will prevent the mother from recovering the custody of her child after the death of the father. *Moore* v. *Christian,* 56 Miss. 408, 31 Am. Rep. 375; *State* v. *Reuff,* 29 W. Va. 751, 2 S. E. 801, 6 Am. St. Rep. 676. Neither the mother nor the father can make a valid disposition of their children by will as against the surviving parent. *People* v. *Boice,* 39 Barb. (N. Y.) 307; *Hernandez* v. *Thomas,* 50 Fla. 522, 39 So. 641, 2 L. R. A. (N. S.) 203. The father can regain custody of a child given into the keeping of third parties in pursuance of a contract made by the mother on her death-bed and to which the father assented. *Hibbett* v. *Bains,* 78 Miss. 695, 29 So. 80, 51 L. R. A. 839; *Bailey* v. *Gaston* (Ala.), 62 So. 1017. Even when the mother has been awarded the child by a decree of divorce, she cannot deprive the father of its custody after her death. *In re Neff,* 20 Wash. 652, 56 Pac. 383.

PRINCIPAL AND SURETY—EFFECT OF UNAUTHORIZED PAYMENTS TO THE PRINCIPAL.—The plaintiffs were owners of a building in course of construction and held the defendant's bond of indemnity against loss in case of default by the building contractor. The building contract specified that in addition to monthly payments a final percentage should be retained until the completion of the building. The bond stated that unless the final payment were made with their consent no liability should attach to the surety. The plaintiffs made a premature payment and later the contractor defaulted. The action was brought to hold the sureties on their bond. *Held,* the failure to hold the final percentage